

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
(EAST ST. LOUIS, ILLINOIS)**

EDMUND WOODBURY, individually and on behalf)
of all others similarly situated,)

Plaintiff,)

vs.)

No. 3:05-CV-00301-GPM

TEMPLETON GLOBAL SMALLER COMPANIES FUND,)
INC., a corporation, and TEMPLETON INVESTMENT)
COUNSEL, LLC,)

Defendants.)

PLAINTIFF'S MOTION TO REMAND PURSUANT TO 28 U.S.C. § 1447(d)

1. Plaintiff filed this case in 2003.
2. Defendants removed the case once before, and this Court remanded it to state court in 2004.
3. Nothing has taken place in the litigation which makes it removable again now (nor do defendants contend otherwise). Rather, they contend that the decision in *Kircher v. Putnam Funds*, 403 F.3d 478 (7th Cir. 2005), is an “order” within the meaning of 28 U.S.C. § 1446(b) which made the case removable.
4. As discussed in greater detail in the memorandum accompanying this motion, the *Kircher* decision does not constitute the kind of “order” within the meaning of section 1446(b) which authorizes a second removal. *See Doe v. American Red Cross*, 14 F.3d 196 (3d Cir. 1993).
5. Accordingly, this removal is untimely.

WHEREFORE plaintiff requests that the Court enter an order remanding the case to state court pursuant 28 U.S.C. § 1447(d) for the reason that Defendants’ second attempted removal is procedurally defective.

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CERTIFICATE OF SERVICE

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